

EXHIBIT A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SUSANNA MIRKIN, et al., . Docket No.
Plaintiffs, . 1:18-CV-02949-ARR-JAM
v. .
XOOM ENERGY, LLC, et al., . Brooklyn, New York
Defendants. . Friday, January 19, 2024
XOOM ENERGY, LLC, et al., . 11:00 a.m.
.

TRANSCRIPT OF STATUS CONFERENCE

BEFORE THE HONORABLE JOSEPH A. MARUTOLLO
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs: Wittels McInturff Palikovic
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1 I'll order that the joint pre-trial order and motions in
2 limine be filed by April 3rd. And again, the joint pre-trial
3 order pursuant to Judge Ross's rule include the motions in
4 limine, right? So that's not unique to her rule, so just to
5 be -- for the parties to follow her rules closely in terms of
6 what precisely is required for her joint pre-trial order,
7 that should be filed by no later than April 3rd.

8 Again, in terms of the class decertification, I
9 won't set a deadline now, but I will put a note in the docket
10 entry that the Defendant has raised it and is contemplating a
11 motion, unless Defendant has a deadline in mind or a timing
12 in mind as to when that pre-motion conference letter will be
13 filed or if that will be filed.

14 MR. MATTHEWS: Your Honor, I'm sorry. On the
15 motion to decertify, I don't believe that falls within Judge
16 Ross's requirements for a pre-motion letter. That's not one
17 of the categories of motions that is specified requires such
18 a letter, but we don't plan to delay this motion. It's
19 contended that we started working on and intend to get in
20 front of it in the next few weeks, but I don't think that a
21 letter is required.

22 I feel like I have to note just the suggestion that
23 we have just now -- that Plaintiff is just learning of these
24 motions for the first time on this call is just -- that's not
25 just not accurate. We forecasted them in writing in prior

1 filings.

2 But we can comply with 75 days. Despite what this
3 call may suggest, we have a pretty good working relationship
4 with Plaintiffs' Counsel, and we'll confer with them to get
5 that set up, and if something comes up that requires and the
6 parties need more time, we'll circle back with you as you
7 suggested.

8 THE COURT: Well, I am going to order the parties
9 to file a letter that's directed to Judge Ross. That isn't
10 for a pre-motion conference, but given the unique
11 circumstances here, that lays out a proposed schedule for
12 Defendants' motion to decertify the class, and I'll order you
13 to file that letter -- I'll order Defendants to file that
14 letter -- actually, you know what? Let me just backtrack
15 here for a second.

16 I appreciate that her rules don't require a
17 pre-motion conference for this type of motion, but given the
18 history of this litigation, I do think it's wise to file
19 something similar to that. So what I'm going to require is
20 that by January 31st, the parties submit a joint letter not
21 to exceed six pages in which the Defendant briefly goes over
22 the proposed motion to decertify the class and the Plaintiff
23 note their opposition and that a proposed briefing scheduled
24 agreed upon by the parties that the motion precede.

25 And that should be addressed to Judge Ross.

1 Now, that may ultimately get referred to me, but in
2 the first instance, that should be addressed to Judge Ross.

3 I'll put all of this in an order after the
4 conference.

5 MR. MATTHEWS: Thank you, Your Honor.

6 THE COURT: One other thing I just want to raise,
7 and this may have already come up over the course of the
8 litigation, but has there been mediation here? A settlement
9 conference? Any discussion about settlement?

10 MR. WITTELS: Your Honor, this is Plaintiffs'
11 Counsel Steven Wittels. We've repeatedly asked during the
12 past five years for Defendants to mediate in all matter of
13 forms -- letters, orally, and we've received no response.
14 Every turn has been blocked as they're doing now, and we're
15 ready to go to trial.

16 If they want to mediate, we're available and ready.

17 MR. MATTHEWS: I guess there was -- before my firm
18 substituted in, there was some discussion of, I believe, an
19 individual settlement. Since we substituted in, Mr. Wittels
20 is right that there have been a couple of times he's raised
21 settlement. We have responded. I've gotten back to him both
22 times.

23 We didn't take him up on it, but I just -- again,
24 we haven't ignored him. It's just not a discussion that
25 we've had --

1 date, that could complicate the process that Your Honor has
2 outlined.

3 So I just wanted to --

4 THE COURT: Understood.

5 MR. WITTELS: -- bring that to everyone's
6 attention.

7 THE COURT: Understood. All right. Well, thanks
8 very much. We'll set an order after this conference.

9 MR. MATTHEWS: Thank you, Your Honor.

10 MR. MCINTURFF: Thank you, Your Honor.

11 MR. WITTELS: Good day.

12 (Proceedings adjourned at 11:36 a.m.)

13

14 TRANSCRIBER'S CERTIFICATE

15 I certify that the foregoing is a correct
16 transcript from the electronic sound recording of the
17 proceedings in the above-entitled matter.

18

19

Faith Vance

February 6, 2024

20

21 Faith Vance

DATE

22 Legal Transcriber

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